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4 UNITED STATES DISTRICT COURT
5 FOR THE NORTHERN DISTRICT OF CALIFORNIA
6 OAKLAND DIVISION
7

8 ELNORA NEWKIRK,

9 Plaintiff,

10 vs.

11 EXPERIAN INFORMATION SOLUTIONS,
12 INC, et al.,

13 Defendants.
14

Case No: C 16-5691 SBA

**ORDER DENYING PLAINTIFF'S
MOTION TO ALTER OR AMEND
THE JUDGMENT**

15 Plaintiff filed the instant action under the Fair Credit Reporting Act ("FCRA"), 15
16 U.S.C. § 1681s-2(b), and the California Consumer Credit Reporting Agencies Act
17 ("CCRAA"), Cal. Civ. Code section 1785.1, et seq., alleging that various credit reporting
18 agencies and certain of his creditors improperly reported debts or delinquencies on his
19 credit report. The Court previously granted motions to dismiss brought by defendants
20 Experian Information Solutions, Inc. ("Experian") and Equifax, Inc. ("Equifax"), and
21 entered judgment in favor them. The parties are presently before the Court on Plaintiff's
22 Motion to alter the judgment. Having read and considered the papers filed in connection
23 with this matter and being fully informed, the Court hereby DENIES the motion.¹

24 **I. BACKGROUND**

25 On October 5, 2016, Plaintiff filed a Complaint against credit reporting agencies
26 Experian and Equifax, and credit information furnisher Capital One, National Association
27

28 ¹ The Court, in its discretion, finds this matter suitable for resolution without oral
argument. See Fed. R. Civ. P. 78(b); N.D. Cal. Civ. L.R. 7-1(b).

1 (“Capital One”). The first cause of action for violation of the FCRA was alleged against all
2 Defendants, while the second cause of action for violation of the CCRAA only named
3 Capital One as a party-defendant. Dkt. 1. On February 16, 2017, Plaintiff filed a
4 stipulation for dismissal with prejudice as to Capital One, pursuant to Federal Rule of Civil
5 Procedure 41(a)(2). Dkt. 43.²

6 In response to the Complaint, Equifax and Experian filed separate motions to
7 dismiss, pursuant to Rule 12(b)(6), which the Court granted on March 16, 2017. Dkt. 47.
8 Finding that further amendment to the pleadings would be futile, the Court dismissed the
9 claims as to Equifax and Experian, without leave to amend. In accordance with the
10 dismissal order, the Court entered judgment in favor of these Defendants on the same day
11 as the dismissal order. Dkt. 48.

12 On April 7, 2017, Plaintiff filed a motion to alter the Court’s March 16, 2017,
13 judgment, pursuant to Federal Rule of Civil Procedure 59(e). Dkt. 49. Specifically,
14 Plaintiff seeks to file an amended complaint with new allegations as to Capital One,
15 notwithstanding the fact that he previously dismissed his claims against that party with
16 prejudice. On the same day, the Court denied the motion based on Plaintiff’s failure to
17 comply with the Court’s meet and confer requirement prior to filing his motion. Dkt. 50.
18 Plaintiff refiled his motion on May 8, 2017. Dkt. 52. Experian has filed an opposition to
19 the motion. Dkt. 53.

20 **II. LEGAL STANDARD**

21 Under Federal Rule of Civil Procedure 59(e), a party may file a motion to alter or
22 amend the judgment within twenty-eight days of entry of the judgment. A motion to amend
23 judgment may only be granted where: “1) the motion is ‘necessary to correct *manifest*
24 *errors of law or fact upon which the judgment is based;*’ 2) the moving party presents
25 ‘newly discovered or previously unavailable evidence;’ 3) the motion is necessary to
26

27 ² The stipulation for dismissal states, in relevant part: “Capital One [shall] be
28 dismissed from this action with prejudice pursuant to Federal Rule of Civil Procedure
41(a)(2), and that each party shall bear its own attorneys’ fees and costs.” Dkt. 43.

1 ‘prevent manifest injustice;’ or 4) there is an ‘intervening change in controlling law.’”
2 Turner v. Burlington N. Santa Fe R.R. Co., 338 F.3d 1058, 1063 (9th Cir. 2003) (emphasis
3 in original, citation omitted). The court has “considerable discretion in granting or denying
4 the motion.” McDowell v. Calderon, 197 F.3d 1253, 1255 n.1 (9th Cir. 1999) (en banc).
5 However, amending a judgment remains an “extraordinary remedy, to be used sparingly in
6 the interest of finality and conservation of judicial resources.” Carroll v. Nakatani, 342
7 F.3d 934, 945 (9th Cir. 2003).

8 **III. DISCUSSION**

9 Plaintiff’s motion fails both procedurally and substantively. As an initial matter, the
10 motion is untimely. Judgment was entered on March 16, 2017, and the twenty-eight day
11 period for filing a Rule 59(e) motion lapsed on April 13, 2017. Plaintiff timely filed his
12 first motion to alter the judgment on April 7, 2017. Dkt. 49. However, the Court denied
13 the motion without prejudice to renewal, based on Plaintiff’s failure to comply with the
14 Court’s meet and confer requirement. Dkt. 50. It was not until May 8, 2017 – 53 days after
15 the entry of judgment – that Plaintiff filed his renewed motion. Dkt. 52. “The time period
16 for filing a Rule 59(e) motion is jurisdictional and cannot be extended by the court.” Carter
17 v. United States, 973 F.2d 1479, 1488 (9th Cir. 1992); Fed. R. Civ. P. 6(b)(2). Because
18 Rule 59(e) is jurisdictional, the Court lacks jurisdiction to grant the relief requested by
19 Plaintiff. Id.

20 Jurisdictional bar aside, Plaintiff’s motion fails to demonstrate any basis for altering
21 or amending the judgment under Rule 59(e). In its motion, Plaintiff contends that the Court
22 should vacate the judgment and permit her to file an amended complaint to make “more
23 specific allegations” that “the failure of Capital One, National Association to update
24 Plaintiff’s account to show payments made and a reduction of the outstanding balance is
25 inaccurate and misleading.” Mot. at 4-5. However, the Court did not grant Experian and
26 Equifax’s motions to dismiss based on any deficiencies with respect to the allegations
27 against Capital One. Moreover, permitting Plaintiff to proffer additional allegations against
28 Capital One is inappropriate given that, prior to the entry of judgment, Plaintiff voluntarily

1 dismissed her claims against that party. Since Plaintiff dismissed those claims with
2 prejudice, filing an amended complaint to provide additional facts regarding Capital One's
3 conduct is futile. See Concha v. London, 62 F.3d 1493, 1507 (9th Cir. 1995) (holding that
4 by obtaining a voluntary dismissal with prejudice, "the plaintiff submits to a judgment that
5 serves to bar his claims forever").

6 **IV. CONCLUSION**

7 For the reasons stated above,

8 IT IS HEREBY ORDERED THAT Plaintiff's motion to alter the judgment is
9 DENIED.

10 IT IS SO ORDERED.

11 Dated: 5/30/17


SAUNDRA BROWN ARMSTRONG
Senior United States District Judge